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and Other Cruel, Inhuman
or Degrading Treatment
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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1996

Addendum

CUBA

[15 November 1996]

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I. GENERAL INFORMATION

1. The current legislation of the Republic of Cuba observes and respects the rights of the individual. It embodies not only the basic, universally recognized legal guarantees pertaining to the protection of human rights, but also material guarantees for the actual and effective exercise of all rights, whether civil and political or economic, social and cultural.

2. In both its domestic and foreign policy, Cuba puts into practice respect for the physical and moral integrity of the individual and, in particular, for the defence of the legitimate interests of citizens. This enables us to affirm that there are no cases of torture, disappearances or other serious violations of human rights in Cuba.

3. The Cuban revolution, born of the struggle against crime and injustice of all kinds, developed from its earliest days, and even before its triumph, a humanistic practice of respect for prisoners and rejection of crime, torture and any other flagrant violation of human rights. This revolutionary ethic lies at the very heart of the conduct of the Cuban socialist State.

4. As from 1 January 1959, with the triumph of the people's revolution, the repressive organs of the time were eliminated and repudiated for their crimes against, and humiliation of, citizens; and soldiers and members of paramilitary groups who had participated in murder, torture and other human rights violations were put on trial. A new police force was created in the service of the people, with a strong humanist ethic, and a new penitentiary system was established emphasizing the rehabilitation of the human being and containing legal guarantees to protect individuals from any illegal or inhuman practice.

5. This protection is embodied in the Constitution proclaimed on 24 February 1976. It reaffirms the profound desire of our national hero José Martí, who in the nineteenth century said: "I want the first law of our Republic to be the homage of Cubans to the full dignity of man".

6. Torture is not characterized as an offence in national legislation. However, given the definition of torture contained in article 1 of the Convention, any act of torture is prohibited and punishable under Cuban law, it being considered incompatible with the principles and foundations of the general legal framework in force in our country.

7. Article 9 of the Constitution stipulates:

> "The State (a) carries out the will of the working people and (...) guarantees the liberty and full dignity of man, the enjoyment of his rights, the exercise and fulfilment of his duties, and the complete development of his personality".

8. Under article 10, "All State organs and their leaders, officials and employees act within the limits of their respective areas of competence and have the obligation strictly to observe socialist legality and ensure that it is respected in society as a whole".

9. In accordance with article 42, "Discrimination on grounds of race, skin colour, sex, national origin or religious belief or any other discrimination detrimental to human dignity" is prohibited and punishable by law.

10. Article 58 of the Constitution proclaims that "the freedom and inviolability of persons are guaranteed to all who live in the national territory ... . The physical integrity of detainees and prisoners is inviolable".

11. Pursuant to article 59, only the competent courts may try and convict persons who have committed offences under prior laws; this may be done only in accordance with the formalities and guarantees established by those laws. Also under this article, "Every accused person has the right of defence. No violence or coercion of any kind may be used against people to force them to testify. Any statement obtained in violation of this provision is null and void, and those responsible for the violation shall be punished in accordance with the law". The same guarantee is laid down in article 166 of the Criminal Procedure Act (Act No. 5 of 15 August 1977).

12. Article 30.8 of the Penal Code (Act No. 62 of 29 December 1987) states that "The convicted person may not be subjected to corporal punishment, nor is it admissible to employ against him any measure that causes humiliation or is detrimental to his dignity".

13. Article 18.4 of the Penal Code, on involvement in offences, defines perpetrators as all those criminally responsible, irrespective of the nature of their involvement, for crimes against humanity, human dignity or public health, or for crimes under international treaties.

14. In addition to being a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Cuba is also a party to various other international human rights instruments, including the following:

(a) Convention on the Prevention and Punishment of the Crime of Genocide (ratified 4 March 1953);

(b) International Convention on the Elimination of All Forms of Racial Discrimination (ratified 15 February 1972);

(c) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (acceded 13 September 1972);

(d) International Convention on the Suppression and Punishment of the Crime of Apartheid (acceded 13 February 1977);

(e) Convention on the Elimination of All Forms of Discrimination against Women (ratified 17 July 1980);

(f) International Convention against Apartheid in Sports (ratified 11 December 1990);

(g) Convention on the Rights of the Child (ratified 21 August 1991);

(h) Agreement establishing the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean (ratified 13 December 1994);

(i) Convention on the Political Rights of Women (ratified 8 April 1954);

(j) Convention on the Nationality of Married Women (ratified 5 December 1957);

(k) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (ratified 20 August 1965);

(l) Slavery Convention of 1926 (final signature 28 June 1954);

(m) Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (final signature 28 June 1954);

(n) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (ratified 21 August 1963);

(o) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (acceded 4 September 1954).

15. Cuban domestic legislation contains provisions for a broader sphere of application than that provided for in the Convention, with regard to the full protection of the individual covering all his rights.

16. The various laws comprising substantive domestic law have been categorized in an organizational structure based on the Constitution and the principles contained therein.

17. With respect to national implementation of the provisions of international instruments, once the State Council has ratified the instrument in question or decided to accede to it, the instrument acquires full legal effect in the domestic legal system, in keeping with the international commitment undertaken. In addition, article 20 of the Civil Code stipulates: "If an international agreement or treaty to which Cuba is a party contains provisions different from those contained in the corresponding articles of the preliminary provisions of the Code or provisions which are not contained therein, the provisions of the said agreement or treaty shall apply."

18. As indicated in paragraph 8 above, in conformity with article 10 of the Cuban Constitution, all State organs and their leaders, officials and employees act within the limits of their respective areas of competence and have the obligation strictly to observe socialist legality and to ensure that it is respected in society as a whole. In particular, the Office of the Attorney-General of the Republic, as an organizational unit subordinate only to the National People's Assembly and the State Council, in conformity with article 127 of the Constitution, has as its main objectives the monitoring and preservation of legality by seeing to it that the Constitution, laws and other legal provisions are obeyed by the State agencies, economic and social institutions and citizens with the Constitution, legislation and other legal

provisions, and the promotion and exercise of public criminal action on behalf of the State. By virtue of its scope and content, all activities of the Attorney-General are consequently focused on guaranteeing legality, with a view to protecting the legal order and, in particular, the rights and freedoms of citizens.

19. Article 109 of the Criminal Procedure Act provides that the Attorney-General, as the official responsible for socialist legality, guarantees that the dignity of the citizen is respected and that he is never subjected to illegal restrictions of his rights. Thus, when the Attorney-General learns of the existence of a human rights violation through a citizen's report or complaint, during examination proceedings or through prosecutorial investigations which he may by law carry out, in conformity with article 106.3 (c) of Act No. 4 of 1977 (Judicial System Organization Act), he has the obligation to act in accordance with the established legal procedures, in order to restore the violated rule of law, without prejudice to any action open to the individual concerned, in order to reclaim in the manner and form determined by law the actual and effective observance of the right that has been infringed.

20. Furthermore, the Attorney-General carries out inspections in order to determine that the law is being complied with in penal establishments, ensuring that the rights of convicted prisoners, persons held in custody and accused persons held in pre-trial detention are observed in accordance with the laws and other legal provisions and their physical integrity respected.

21. In addition, within the organizational structure of the Office of the Attorney-General there is a Citizens' Rights Department, mandated to process and reply to complaints and claims relating to alleged violations of the law.

22. Article 3 of Act No. 70 of 12 July 1990 (People's Courts Act) provides that, in conformity with article 120 of the Constitution, "the function of administering justice emanates from the people and is exercised on its behalf by: (a) the People's Supreme Court; (b) the People's Provincial Courts; (c) the People's Municipal Courts; (d) the military courts". Article 4 goes on to state that "the main objectives of the courts' activities are (a) to maintain and strengthen the socialist legality; ... (c) to protect the life, freedom, dignity, honour, property, family relations and other legitimate rights and interests of citizens; ... (e) to prevent violations of the law and antisocial conduct, punish and rehabilitate the perpetrators of such violations, and re-establish the authority of legal provisions when they have been violated".

23. Article 6 goes on to state: "the courts shall notify the Attorney-General of any offences that may come to their attention during the processing or consideration of judicial acts and trials, so that the Attorney-General may proceed to restore legality, informing the courts of the outcome of his acts".

24. The Act further stipulates that the judicial function in Cuba has a higher rank than administrative activity, and Chapter XIII of the Constitution states that "the judgements and other enforceable decisions of the courts, pronounced within the limits of their jurisdiction, are binding on the State

agencies, the economic and social institutions and citizens, on those directly affected by them and on those who have no direct interest in their implementation but have an obligation to participate in it". This principle of legality is reiterated in the above-mentioned Act No. 70.

25. In Cuba, the observance and implementation of the basic principle of respect for the physical and moral integrity of the individual and, in particular, the defence of the legitimate interests of citizens mean that there are no cases of persons who have been tortured or disappeared and no other grave and systematic violations of human rights. The protection of all members of the human family against torture and other cruel, inhuman or degrading treatment or punishment is embodied in the legislation in force.

26. Should such an act occur, it would, in conformity with Cuban criminal law, constitute a serious offence which, when tried by the competent courts, could result in the perpetrators being sentenced to severe punishment.

27. In conformity with article 109 of the Criminal Procedure Act, in addition to ensuring the investigation of punishable acts, the Attorney-General is responsible for determining the objective truth and bringing the perpetrators to justice and ensures respect for the procedural guarantees of the accused, protection of the rights of the victims of the offence, and the interests of the State and society.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 2

28. In Cuba today, torture is inadmissible and indeed alien to the very nature of the Cuban social system. There is no provision for the possibility of the use of torture under any circumstances, however exceptional. In accordance with this principle the State has made a deep commitment to its people, on the basis of which it has taken and is taking effective measures for the prevention of acts of torture and other cruel, inhuman or degrading treatment or punishment, as stipulated in article 2 of the Convention against Torture.

29. The Cuban Constitution stipulates the following:

> "Article 58. The liberty and inviolability of the person are guaranteed to everyone residing in the country.
>
> Nobody may be arrested except in the manner, with the guarantees and in the cases indicated by law.
>
> The physical integrity of detainees and prisoners is inviolable.
>
> "Article 59. Nobody may be tried or convicted except by the competent court by virtue of laws which existed prior to the crime and with the formalities and guarantees that the laws establish.
>
> Every accused person has the right of defence.

No violence or coercion of any kind may be used against people to force them to testify.

Any statement obtained in violation of this provision is null and void, and those responsible for the violation shall be punished in accordance with the law."

30. In addition, article 30.8 of the Penal Code, which establishes the penalties to be imposed by the courts, states: "The convicted person may not be subjected to corporal punishment, nor is it admissible to employ against him any measure causing humiliation or detrimental to his dignity".

31. As an essentially preventive measure to avoid non-compliance with the law, article 127 of the Constitution stipulates that the main objectives of the Office of the Attorney-General are to monitor and preserve legality by seeing to it that the Constitution, laws and other legal provisions are obeyed by the State agencies, economic and social institutions and citizens.

32. One of the principles of Cuban criminal procedure is established in article 3 of the Criminal Procedure Act, which states: "Every offence shall be proven independently of the testimony of the accused, or his or her spouse or relatives". This means that a statement by any of the above-mentioned persons does not by itself remove the obligation to furnish the evidence necessary to prove the facts to the authorities mandated by law to participate in criminal proceedings.

33. All bodies, agencies, organizations and other entities, including economic entities of any kind, have an unavoidable duty to submit to the courts, prosecutors, examining magistrates or the police any reports, information or background material the latter may require in order to investigate an offence, within a time-limit of not more than 20 working days after the file is received, extendable only under exceptional conditions. If the request is not complied with, the above-mentioned authorities will contact the heads of the institutions in question in order that they may take appropriate measures, irrespective of any responsibility incurred.

34. The rules and procedures governing the work of the judicial investigation bodies establish the principles for dealing with detained persons and their rights, which are in keeping with the provisions of articles 58 and 59 of the Constitution, article 166 of the Criminal Procedure Act and article 30.8 of the Penal Code. The legislation provides for the taking of statements, but article 161 of the Criminal Procedure Act grants the accused the right to make a statement or to refrain from doing so.

35. The provisions for dealing with detainees and ensuring respect for their rights stipulate that interviews of detainees shall be conducted in strict compliance with the constitutional guarantees prohibiting the use of violence or coercion to force a detainee to make a statement and that persuasion and encouragement shall be used at all times.

36. Statements obtained through violence are considered null and void and offenders are punished. Detainees are guaranteed medical assistance and medication if required and for as long as prescribed, and decent conditions of detention.

37. It may be of interest to learn that, elaborating on the foregoing, article 4 of the Code of Ethics for members of the National Revolutionary Police, of 1 June 1985, stipulates:

> "The professional activities of members of the National Revolutionary Police, regardless of their field or rank, shall be conducted in accordance with the following principles:
>
> 'Paragraph ch. Act at all times with respect for human dignity and the rights of every citizen.
>
> 'Paragraph n. Perform the duties required of them by law at all times, by serving society and protecting all persons against illegal acts, in keeping with the high degree of responsibility required by their profession.
>
> 'Paragraph p. Be aware of, respect and protect the rights of all citizens: police authority shall be exercised with firmness, respect and justice'".

38. Article 7 of the Code stipulates: "Members of the National Revolutionary Police may in no circumstances perform, instigate or tolerate any act of torture (physical or mental) or other cruel, inhuman or degrading treatment, even in compliance with an order from a superior officer".

39. The Disciplinary Regulations of the Ministry of the Interior, dated 31 January 1989, also help to ensure compliance with these guarantees. Article 7 stipulates that members shall:

> "(h) Guarantee scrupulous respect and courtesy in relations with the public;
>
> "(i) Observe proper behaviour within and outside their unit, not commit or allow others to commit in their presence violations of the rules governing social coexistence or the legislation in force, and in all circumstances help defend the honour, dignity and rights of all Cubans;
>
> "(j) At all times, especially while on duty, display loyalty, conscientiousness, diligence, honesty and sensitivity".

40. Article 2 of the Cuban Prison System Rules, dated 20 October 1992, stipulates: "The penalties and other measures referred to in these Rules shall be carried out with respect for socialist legality; any type of measure that may cause physical or psychological suffering or humiliation is prohibited".

41. Under no circumstances, however exceptional (war or public emergency), may the orders of a superior officer or public authority be used to justify

torture or other cruel, inhuman or degrading treatment or punishment in Cuba. The National Defence Act does not, even indirectly, authorize torture or other cruel, inhuman or degrading treatment in any circumstances, including emergency situations.

42. In this connection, article 25 of the Penal Code defines due obedience as follows: "Obedience that is required of the agent by law, provided that the person ordering the act is empowered to do so and the performance of the act is among the obligations of the person who has performed it".

43. Article 13.1 of the Military Offences Act establishes penalties for any member of the armed forces who oversteps his authority or fails to perform his duties properly. Articles 42, paragraphs 1 and 2 and 44, paragraphs 1 and 2, establish penalties ranging from six months' to 20 years' imprisonment or the death penalty for anyone who ill-treats, abuses or in other ways oversteps his authority in dealing with prisoners or the public in war situations.

44. It should be stressed that the Cuban Government is taking the necessary steps to prevent the acts prohibited by the Convention against Torture, as it considers them to be an affront to human dignity and a violation of the relevant domestic laws and international standards. There is no room for impunity in Cuba, or for laws or regulations that protect it.

Article 3

45. Cuban criminal legislation provides for so-called active extradition, when the Cuban Government requests a foreign State to hand over an indicted or convicted person, and passive extradition, which occurs when a foreign State requests that an indicted or convicted person be handed over by the Cuban Government.

46. The legal sources for passive extradition are: international treaties and, in their absence, Cuban legislation; for active extradition, international treaties and, in their absence, the principle of reciprocity.

47. Article 6.1 of the Penal Code stipulates that Cuban citizens may not be extradited to another State and that foreigners shall be extradited in conformity with international treaties or, in their absence, Cuban legislation.

48. As a condition for the application of Cuban criminal legislation to foreigners and non-citizens who are not resident in Cuba and commit offences abroad, if they are in Cuba and have not been extradited, the law stipulates that the act shall be punishable in the place where it was committed. This requirement is waived if the act in question is an offence against the fundamental political or economic interests of the Republic, or an offence against humanity, human dignity or public health, or is prosecutable under international treaties.

49. Article 12, paragraph (e), of the Constitution states that Cuba repudiates physical violence against persons residing in other countries. In

accordance with this principle, no foreign citizen will be expelled, returned or extradited to another State when there are valid reasons to believe that he or she will be in danger of being tortured.

Article 4

50. The Cuban Penal Code establishes penalties for the offence of causing bodily injury ranging from 3 months' to 12 years' imprisonment, according to the seriousness of the injury and the extent to which it endangers life, covering the possibility of blinding or mutilating or rendering a person unfit for procreation. The Code also establishes the offence of coercion, which is comparable to forms of physical or psychological torture.

51. Article 272 of the Penal Code stipulates:

> "Anyone who causes another person bodily injury or seriously harms his health shall be liable to a penalty ranging from two to five years' imprisonment".
>
> "Serious injury is considered to be injury that places the victim's life in imminent danger or causes deformity, disability or any other anatomical, physiological or psychological sequelae."

52. Article 273 states: "Anyone who blinds or mutilates another person or renders him or her unfit for procreation shall be liable to a penalty of 5 to 12 years' imprisonment".

53. Article 274 reads: "Anyone who causes another person bodily injury or damages his health, even if the victim's life is not endangered and he is not left with any of the sequelae mentioned in articles 272 and 273, and when the injury is such as to require medical treatment, shall be liable to a penalty of three months' to one year's imprisonment and/or a fine of 100 to 300 units".

54. Article 286 establishes a penalty of six months' to two years' imprisonment or a fine of up to 500 units for the offence of coercion or assault.

55. Any attempt to commit an offence that may constitute torture is punishable under the Penal Code. In Chapter IV, article 12 of the Code stipulates: "Both completed and attempted offences are punishable", and considers an attempt to occur "if the individual has begun to commit an offence but not completed it". The article further specifies that the penalties for an attempt to commit an offence shall be the same as those laid down for the offences themselves, "although the court may reduce them by up to two thirds of their lower limit", as an attempted act should not always carry the same punishment as a completed act.

56. Accomplices and participants in any offence constituting torture are punished in accordance with article 18 of the Penal Code, which states: "All persons criminally responsible for crimes against humanity, human dignity or public health, or offences laid down in international treaties, are considered to be perpetrators, irrespective of their form of involvement". Article 19

states: "The court shall set penalties for perpetrators within the limits set for the offence committed". Accomplices are liable to the penalty corresponding to the offence, reduced by one third of its upper and lower limits.

57. As an accessory penalty to be ordered at the court's discretion, article 39 provides for the prohibition of the exercise of a profession or holding of a post or office in cases where the person committing the act has misused his post or been negligent in fulfilling his duties, for a period of one to five years, which may be extended by up to two times for offences carrying a penalty of over five years' imprisonment.

58. The aggravating circumstances laid down in article 53 of the Penal Code include committing the offence with cruelty or extreme depravity, with abuse of power, authority or trust or by taking advantage of the victim's defencelessness or dependency on or subordination to the offender.

59. Article 36 of the Military Offences Act includes the offence of dishonourable conduct, and provides for criminal measures to be taken against any member of the armed forces who commits an act which, while not constituting torture, may constitute ill-treatment of another person.

60. The same Act also establishes the offence of abuse of office when an officer or other member of the armed forces repeatedly and for reasons of personal interest performs functions that are not assigned to him or oversteps the functions assigned to his post, causing consequences for the activities or interests of the military institutions or any of their members, even if this does not occur repeatedly or result in personal benefit. For this offence he is liable to 2 to 10 years' imprisonment. During wartime or combat activities, owing to the danger to society this offence entails, the penalties are increased from 10 to 20 years' imprisonment, or death.

61. Any person who seriously mistreats a prisoner of war is liable to a penalty of six months' to three years' imprisonment.

62. Anyone who performs acts of violence against the civilian population in a region of military conflict is liable to 1 to 8 years' imprisonment or, if such acts are performed repeatedly or with cruelty, 8 to 20 years' imprisonment or death.

63. If a doctor attending a person or identifying a body detects signs of external injury due to violence or signs that an offence has been committed and does not report it, he may be criminally liable to up to two years' imprisonment or a fine of up to 500 units.

Article 5

64. The territorial jurisdiction of Cuban criminal law entails its applicability to all acts committed within State territory and to all persons who, for whatever reason, are present within that territory, whether they be citizens, foreign nationals or stateless persons. The territorial validity of internal law covers types of offences corresponding to the requirements of article 5 of the Convention.

65. Under article 4 of the Penal Code, "Cuban criminal law is applicable to all offences committed in the national territory or on board Cuban ships or aircraft, wherever they happen to be, with the exceptions established by the treaties to which the Republic is a party." It is also applicable to offences committed on board foreign ships or aircraft in Cuban territorial waters or airspace, whether by Cubans or by foreign nationals, except for those offences involving only foreign crew members, unless the ship's captain or consul of the country of which the victim is a national asks the Cuban authorities to assist the victim.

66. An offence is also considered to have been committed in Cuban territory if the offenders engages within the territory in preparatory acts or acts which trigger the offence, even though the result is produced abroad, or vice versa.

67. According to article 5, criminal law is also applicable to:

(a) Cubans and stateless persons residing in Cuba who commit an offence abroad, whether they are present in Cuba or have been extradited;

(b) Cubans who commit an offence abroad and have been turned over to Cuba for trial by its courts, under treaties to which the Republic is a party;

(c) Foreign nationals and stateless persons not residing in Cuba who commit an offence abroad, if they are present in Cuba and have not been extradited, or if they reside in the territory of the State in which the offence was committed or in any other State, provided that the act is also punishable in the place where it was committed. This latter requirement is not enforceable if the act constitutes an offence against the fundamental - political or economic - interests of Cuba, or against humanity, human dignity or public health, or is prosecutable under international treaties.

Article 6

68. Cuban criminal law provides for the detention of any person who has committed any act that constitutes torture, as defined in the Convention. Following detention, measures may be taken to confine the accused, depending on the alarm caused by the offence and whether it provoked justified, widespread condemnation and animosity in the place where it occurred.

69. In Title IV "Detention and confinement of the accused", Chapter I "Detention", of the Criminal Procedure Act, article 242 stipulates that "anyone may detain:

> A person who is attempting to commit an offence, at the time he is about to commit it;
>
> A person caught in flagrante delicto;
>
> A person who, by fleeing, violates the imprisonment or pre-trial security measure to which he is being subjected;
>
> An accused person sentenced in absentia".

70. Article 243 of the same Act stipulates that the police are under the obligation to arrest:

(a) Anyone found in one of the above-mentioned situations, who has fled while in detention or pre-trial custody or in respect of whom an arrest warrant has been issued;

(b) Anyone accused of an offence against State security;

(c) Anyone accused of an offence for which the penalty exceeds six years' imprisonment;

(d) Anyone accused of committing an offence that has caused alarm, i.e. of the kind which is frequently committed in cities, or about whom there is good reason to believe that he will try to evade justice.

71. Following arrest, custodial or non-custodial precautionary measures may be taken, in accordance with the relevant Cuban laws.

72. As stipulated in article 249 of the Criminal Procedure Act, once any of the precautionary measures provided for by law has been ordered, the accused becomes a party to the criminal proceedings and his counsel may communicate with him in due privacy, examine the contents of the preliminary case file, furnish evidence, submit documents on behalf of his client and request the withdrawal or modification of the precautionary measure.

73. The examination of the preliminary case file may not exceed 60 days, which may be extended by the examining magistrate's superior officers by a period not exceeding 180 days. In exceptional cases the Attorney-General may grant a further extension in order to conclude examination of the case file.

74. Cuba is a party to the Vienna Convention on Consular Relations of 24 April 1963, by which, and in compliance with national legislation, it promptly informs the appropriate consular office of the detention or pre-trial custody of any national of the State represented by that office.

75. The competent authorities provide all facilities to enable foreign nationals detained for having committed an offence to communicate with their consular representative.

76. The detention, circumstances and outcome of criminal proceedings brought against a foreign national are communicated by the authorities to the consular representatives, who may organize his defence before the courts.

77. At the time of its accession to the Convention, Cuba has more than 30 years' experience and the legal foundations and procedures needed to comply with the requirements of article 6.

Article 7

78. Criminal proceedings are brought by the prosecutor before the jurisdictional body competent to hear the charge against the accused, once the

prosecutor considers the preliminary case file submitted by the parties to be complete; he then formulates the appropriate preliminary arguments and makes the detainee available to the court.

79. When the court considers that the pre-trial proceedings are complete, it opens the oral proceedings, assuming the indictment has been made, and orders the accused persons to appear with a copy of the evidence submitted, so that they may appoint attorneys for their defence if they have not yet done so; if this is not done within five working days, an attorney is appointed for them by the court.

80. Counsel for the defence receives the record of the pre-trial proceedings so that he may prepare his preliminary arguments in response to those of the prosecutor.

81. In conformity with Cuban law, the standard of evidence required for prosecution or indictment is equally rigorous for any of the cases covered by article 5 of the Convention.

82. Under Cuban criminal procedure, every accused person is entitled in complete equality to the following guarantees:

(a) To be notified promptly of the nature and reasons for the charge against him, under article 244 of the Criminal Procedure Act;

(b) To be given the necessary time and means to prepare his defence, to appoint a defence attorney of his own choosing and to communicate with that attorney, in accordance with articles 244 and 281 of this Act;

(c) To be tried without undue delay, without prejudice to his right to claim compensation for damage and injury, and other responsibilities arising under article 31 of the Act;

(d) To request the immediate taking of evidence which, for whatever reason, he fears cannot be given in a public hearing, in accordance with articles 249 and 250 of the Act;

(e) To be convicted at a public hearing for acts covered by the indictment; in other words, the principle of proportionality between the charge and the sentence must be observed, in accordance with articles 350 and 357 of the Act;

(f) To appeal against convictions, so that they may be reviewed by a higher court.

83. Article 34 in Chapter III, ("Status of foreigners") of the Constitution provides that foreign nationals residing in Cuban territory are deemed to be comparable with Cuban citizens as regards the obligation to respect the Constitution and the law and to submit to the jurisdiction and decisions of the Cuban courts of justice and authorities.

84. Oral proceedings are public in Cuba unless, for reasons of State security, morals or public order or out of respect for the person injured by

the offence or his family members, it is advisable for them to be held in camera. During the oral proceedings, the accused may, if he so wishes, state whatever he considers necessary in relation to the acts with which he is charged, and may refrain from replying to any questions asked of him.

85. The accused must be present at all times during the presentation of evidence at the trial; when for whatever reason he cannot be present, he must be represented by his attorney.

86. Once the presentation of evidence is completed and the final arguments have been made by the parties, they must make their oral pleas; once they have been completed, the accused will exercise his right to have the last word if he wishes to add anything to his defence.

87. The Cuban courts, through the Legal Office of the Ministry of Foreign Affairs, must inform accredited embassies of any nationals standing trial in those courts, and of the date of the oral proceedings, which is also in conformity with article 36 of the Vienna Convention on Consular Relations. They will also apprise the Cuban Immigration and Status of Foreigners Office of any sentences handed down against foreign nationals and stateless persons involved in criminal proceedings.

Article 8

88. In accordance with article 6.1 of the Cuban Penal Code, Cuban citizens may not be extradited; article 6.2 states that the extradition of foreign nationals is to be carried out in conformity with international treaties or, in their absence, Cuban law, which does not exclude the possibility of the foreign nationals being tried by Cuban courts in conformity with the comments on articles 4 and 5 of the Convention.

Article 9

89. With regard to the offences referred to in article 4 of the Convention, Cuba provides the legal assistance requested in accordance with the international treaties to which it is a party or, in their absence, Cuban law.

90. Foreign nationals sentenced to imprisonment by Cuban courts may be turned over to the States of which they are nationals to serve their sentences in the cases and in the manner prescribed by the treaties. Similarly, Cuban nationals sentenced to imprisonment by foreign courts may serve their sentences in Cuba, also under the terms of the relevant treaties. The Cuban court considered competent to hear the case at first instance will be competent to hand down the verdict and determine the length of the sentence, which will for all purposes be considered equivalent to the sentence at first instance.

91. In Cuban judicial practice, civil proceedings determine how enforceable sentences handed down by foreign courts will be executed in cases where no treaties exist; such sentences are served as if they were national sentences:

(a) If they were handed down in consequence of bringing an action;

(b) If they were not handed down in the absence of the accused;

(c) If they relate to acts accorded comparable legal status under Cuban legislation;

(d) If the document containing the sentence appears to have been issued in accordance with the conditions required for its authenticity in the country concerned, and if the legal requirements for their certification in Cuba have been observed;

(e) If the sentence is accompanied by a communication from the Ministry of Foreign Affairs of the country in which it was handed down, stating that the authorities of that country will carry out sentences pronounced in Cuba, on the basis of reciprocity;

(f) If the convicted person's Cuban domicile, should he have one, is clearly indicated.

92. The execution of foreign sentences is requested of the Supreme Court of the Republic unless, under an international treaty, that task comes under the competence of another court.

Article 10

93. In the training of Cuba's law enforcement personnel, the ethical principle of respect for life and physical integrity has been foremost. In addition to the legal obligations, these personnel have duties corresponding to their conscientiousness and responsibility, which includes the strictest discipline and the obligation to account to their superior officers, colleagues and those who, on behalf of the Cuban people, selected them to discharge that responsibility.

94. Law students are given appropriate training on the scope and content of conduct that may be characterized as criminal.

95. In the State security and internal security agencies, officers in charge of the treatment of detainees, accused persons and convicted prisoners receive training in which they are told that any mistreatment, by word or deed, is considered a sign of powerlessness, uncouthness or technical or professional incompetence. These officers are required to observe the Code of Ethics and Disciplinary Rules, which explicitly include the prohibitions referred to in article 2 of the Convention.

96. Officials of penal establishments, and examining bodies receive suitable instruction as part of their professional training on the scope and content of criminal conduct that may be categorized as constituting an act of torture or other cruel, inhuman or degrading treatment.

97. In their training courses, these officials are also taught the standards and rules set forth in the main international conventions and covenants, as appropriate, such as the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the International Covenant on Civil and Political

Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and the Convention on the Prevention and Punishment of the Crime of Genocide.

98. In Cuba, doctors and health care personnel in general are taught the principle of providing protection for physical and mental health, regardless of the characteristics of the patient. Thus, all persons in prison or detention receive medical assistance when they need it, on the same terms as other persons.

Article 11

99. Under Cuban legislation, government procurators are required to ensure compliance with socialist legality in the treatment of detainees by examining bodies, while government procurators and magistrates carry out the same task in penal establishments.

100. The organizational structure of the Office of the Attorney-General includes a department for the supervision of legality in penal establishments. This department, inter alia, contributes effectively to constant review of the provisions for the custody and treatment of detainees and prisoners in all parts of Cuba.

101. Article 5 of the Prison Regulations stipulates that, in accordance with existing legislation, magistrates and government procurators must be permitted access to penal establishments and other places of detention to monitor the implementation of the penalties and pre-trial detention measures imposed by the courts, and thus contribute to the achievement of their purposes.

102. In order to ensure that the law is complied with, the chief officials of towns, provinces and the State security and internal security agencies constantly monitor on a daily basis the bodies and officials responsible for the custody and treatment of persons undergoing any form of arrest, detention or imprisonment and for ensuring compliance with the provisions covering interviewing methods and practices. This enables inadequacies and errors in the application of the relevant legislation to be detected in time and appropriate steps to be taken to remedy them.

Article 12

103. In accordance with article 116 of the Criminal Procedure Act, any person who witnesses the perpetration of an officially prosecutable offence, or is certain that such an offence has been committed, is required to bring it to the attention of the nearest court, prosecutor, examining magistrate, police unit or military unit. Persons who, through their responsibilities, profession or occupation, have information that an offence has been committed are required to do the same. The article further provides that if a State official or employee should fail to perform this obligation, his superior officer will be informed in order that appropriate administrative or employment-related action may be taken.

104. Under article 119 of the same Act, if the police are informed that an offence has been committed, they may arrest the suspect, take the requisite precautionary measure (this may not, however, take the formal pre-trial detention, which is only ordered as provided by law) and immediately initiate the essential formalities.

105. The Criminal Procedure Act lays down strict rules for carrying out investigations of offences and bringing their perpetrators before the competent courts, which ensure the necessary rapidity in the investigations and give equal rights to all persons involved in the criminal proceedings.

106. It is established practice in the State security and internal security agencies in Cuba that, when evidence of irregular behaviour exists, the appropriate department requires the staff to produce a detailed report of the events and immediately carries out the pertinent investigations pending a possible legal or administrative response.

Article 13

107. Throughout the country, the right of citizens to submit complaints and petitions to the authorities and to be receive a response or attention within a reasonable time in accordance with the law is protected by the Constitution. Citizens also have the right of an effective appeal to the competent courts and of a public hearing on an equal footing before an independent and impartial court.

108. In cases where the acting authorities decide not to initiate criminal proceedings and request the competent court to order a general or partial dismissal of proceedings, criminal law allows the victim of the offence to bring a private action, whereupon the case enters the oral proceedings stage and is settled by the court.

109. If the act which has given rise to the complaint constitutes an offence, the person concerned may lay an information with the competent authorities, as provided for in article 116 of the Criminal Procedure Act, and the police will immediately proceed to take action in accordance with article 119 of the Act.

110. If the complaint concerns an enforceable judgement or dismissal of proceedings by the courts, the person concerned may request the Minister of Justice, the President of the Supreme Court and the Attorney-General of the Republic for a review, in accordance with article 455 of the Criminal Procedure Act, provided that he complies with the requirements of the law.

111. The Cuban courts also deal with claims by citizens relating to their work; the People's Supreme Court has a department for collaboration, publicity and legal information which, under article 26 (b) of Act No. 70 of 1990, performs this very sensitive task. Article 53 of the Criminal Procedure Act stipulates that the remedy of complaint may be exercised against decisions by the examining magistrate or procurator which may cause irreparable damage.

112. The Penal Code protects individuals and their relatives who have contributed, as witnesses or in any other way, to enforcing or applying laws or general provisions; and in article 142.2, it establishes penalties for those who employ violence or intimidation against them.

113. Paragraph 3 of the same article adds that a similar penalty is incurred when the violence or intimidation is used as vengeance or reprisal against the relatives of the above-mentioned persons and in the circumstances described above.

114. A similar assurance is provided for prisoners. Article 63 (o) of the Prison Regulations stipulates that any person held in detention has the right to "submit verbal or written complaints to the authorities through the appropriate channels and to receive a reply from them". Paragraph (k) of the same article recognizes the right of prisoners to "initiate legal formalities through a lawyer or the head of the penal establishment or place of detention".

115. Within the Ministry of the Interior there is a procedure requiring senior officials and their auxiliary staff to organize and implement the handling of complaints, claims, requests and suggestions by individual citizens, who should be seen by them and given due attention. This procedure covers any accusation against the police or a public official relating to treatment condemned by the Convention in articles 1 and 16.

116. The internal regulations of the Ministry of the Interior lay down the general guidelines for the work of its departments in receiving and dealing with complaints by the public. They state that:

> "All claims and applications by citizens shall be treated with due attention and respect; they shall always be processed without exception, whether they are complaints, accusations or reports, requests or suggestions.
>
> "Similarly, all claims shall be checked; it shall be a rule that they are processed and given a reply within the prescribed time limit. In all cases, impartiality and justice shall prevail in the handling of complaints, requests and suggestions, over and above the specific interests of individuals or departments.
>
> "Whenever violations or misconduct on the part of our police are established, appropriate legal, disciplinary or administrative measures shall be taken; their timely and effective application shall be the responsibility of department chiefs, for which purpose effective monitoring mechanisms shall be established.
>
> "Citizens shall be given a personal response; a written record shall be kept of this response and whether or not it conforms to the results reported. Should this not be the case and should there be due grounds, the claim shall be investigated by a higher authority than that which originally investigated it."

117. In order to ensure greater impartiality, the Ministry of the Interior forbids organs or individuals who are the subject of claims to be informed of or to participate in the investigations and decisions concerning these matters or accusations until the case is terminated.

118. At the administrative level, the State Council issued Decree-Law No. 67, which established, as a common duty, function and responsibility for all agencies, various tenets and organizational principles for the public administration. These included attending to and providing a pertinent response within 60 days to the complaints and petitions addressed to them by citizens, endeavouring to find correct solutions to the questions raised and taking steps to eliminate the shortcomings indicated.

119. The Office of the Attorney-General also contains departments which deal with citizens' rights, and handle and respond to complaints and petitions relating to irregularities in the observance of the law, in accordance with the functions assigned to it by article 106 of Act No. 4 of 1977, on the monitoring of legality by ensuring strict compliance with the law and other legal provisions.

Article 14

120. The Cuban Constitution stipulates that any person who suffers damage or injury at the hands of State officials or agents in the exercise of their official duties has the right to claim and obtain appropriate redress or compensation in the form prescribed by the law.

121. In the words of article 70.1 of the Penal Code, "Any person who is criminally liable is also liable in civil terms for the damage and injury caused by the offence. The court which hears the case shall declare the person's civil liability and its extent, applying the relevant provisions of civil law, and shall also directly enforce the obligation to restore the material loss and redress the moral damage".

122. If the accused refuses to provide moral redress, the court will impose on him an additional prison sentence of not more than six months.

123. Article 71.1 of the Penal Code states: "The Compensation Fund is the body responsible for enforcing civil liability consisting of redress for material damage and compensation for injury".

124. The action to claim civil liability is brought jointly with the criminal action; it does not entail abatement of the latter in cases which give rise to the abatement of the criminal indemnity action, and may be brought as appropriate.

125. The Cuban Labour Code (Act No. 49) stipulates that a worker who is subpoenaed by the court, by the procurator's office or by the investigation agencies or is held in custody or in pre-trial detention when the accused is not convicted shall have the right to receive the wage which he has forfeited without detriment to his right to seek compensation on other accounts.

Article 15

126. The Cuban Constitution prohibits the use of violence or coercion against individuals to force them to testify, and declares null and void any statement obtained in breach of this provision. Persons found guilty of such acts are liable to the penalties which criminal law establishes for cases categorized as offences. Article 59 stipulates that "No violence or coercion of any kind shall be used against individuals to force them to testify".

127. This principle is confirmed by article 166 of the Criminal Procedure Act, which stipulates: "Any statement obtained in breach of this principle shall be null and void, without prejudice to any criminal liability that may be incurred".

128. Article 172 of the Act states: "No witness may be forced to make a statement concerning a question if answering it may cause direct or substantial material or moral damage to his person, honour or interests, or to the person, honour or interests of a close relative".

129. In accordance with Cuban legislation, no statement which is established to have been made as a result of an act of torture may be invoked as evidence in any proceedings, except against a person accused of committing the act of torture as evidence that the statement was made as a consequence of that act.

130. Article 183 of the Criminal Procedure Act states that under no circumstances may coercion, deceit, promises or subterfuge be used to force or induce a witness to testify in a specific sense.

131. In accordance with article 109 of the Act, the government procurator, as the person responsible for ensuring compliance with the law, guarantees that the citizen's dignity is respected and that under no circumstances will he be subjected to unlawful restrictions of his rights.

132. Article 312 states that in the public oral hearing before the court, a person's right not to be required to testify on his own behalf must be reasserted; logically, persons exempted from testifying as witnesses will not appear before the court in that capacity.

133. As was said earlier in the explanation of certain measures for ensuring compliance with article 2 of the Convention, the provisions and procedures for the work of the investigating bodies of the Ministry of the Interior state that during the questioning process strict compliance must be ensured with the constitutional and juridical prohibitions of the use of violence or coercion to force a detainee to testify, while officials are reminded that statements obtained by violent methods are considered to be null and void and that offenders will be punished.

Article 16

134. Cuban criminal law makes provision for offences or unlawful forms of behaviour related to compliance with the first paragraph of this article, such as:

(a) Wrongful execution of penalties or security measures (art. 141);

(b) Abandonment of children, or disabled persons or destitute persons (arts. 275 to 278);

(c) Offence of deprivation of liberty (art. 279);

(d) Illegal search (art. 288);

(e) Offences against the rights of assembly, demonstration, association, complaint or petition (art. 292);

(f) Offence against the right of equality (art. 295);

(g) Wrongful imposition of disciplinary measures (art. 297).

These and other articles already considered make it possible to punish acts or forms of behaviour relating to actions which, without actually constituting torture, may represent ill-treatment by public officials or other persons acting in an official capacity.

135. In accordance with the Penal Code, Chapter I, "Violation of the duties inherent in public office", Title II, "Offences against the administration and the courts", Book II, "Special section", penalties are imposed on a public official who, in attempting to cause prejudice to a person or obtain unlawful benefit, uses his position in a manner manifestly contrary to the law or arbitrarily exceeds his lawful powers (offence of abuse of authority).

136. With reference to the precautionary measure of pre-trial detention for which the law makes provision, the State Council agreed, on 8 March 1985, to issue instructions to the Supreme Court and the Office of the Attorney-General with the aim of immediately standardizing their criteria, through a general and mandatory interpretation of the law, with a view to reducing to a minimum the number of accused persons held in pre-trial detention. The interpretation achieved has helped to ensure that in Cuba the so-called "unconvicted prisoners" are not a problem because of the speed with which proceedings are handled. Both statutory and judicial deadlines have been shortened, and the latter are fully binding on all persons in any way involved in the criminal proceedings.

137. Article 30 of the Penal Code provides that the time spent by the prisoner in custody and pre-trial detention is automatically deducted from the duration of the prison sentence. In addition, the prisoner may not be subjected to corporal punishment nor may any measure be used against him which involves or results in loss of his dignity.

138. The concept of holding a detainee or prisoner incommunicado is totally alien to criminal and procedural practice in Cuba. Accused persons have the right to be visited by their relatives and their counsel, in accordance with the statutory regulations, while the habeas corpus procedure is an additional guarantee.

139. The so-called summary procedure applies only in cases where exceptional circumstances so require. The Attorney-General may inform the President of the People's Supreme Court, who may decide that offences coming within the competence of any court of justice will be tried in accordance with the summary procedure, with the exception of those which come within the competence of the people's municipal courts. None of the procedural guarantees already discussed may be restricted, but the time limits may be shortened to the extent that the competent court deems necessary.